REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application in condition for allowance.

Pursuant to the provisions of 37 C.F.R.§§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by three (3) months, i.e., up to and including April 26, 2004. A check for $950.00 is enclosed with this Amendment. Applicants authorize the Assistant Commissioner to charge any additional fee for consideration of this amendment, or credit any overpayment, to Deposit Account No. 50-0320.

Claims 16 and 23-42 are pending. Claims 23 and 38 were amended without prejudice. Applicants reserve the right to pursue cancelled subject matter in a continuation application.

The amendments to the claims and the remarks made herein are not made for reasons related to patentability and thus, do not prevent the application of the doctrine of equivalents. Support for the amended claims is found throughout the specification.

No new matter is added.

Claims 23, 24, 26-28, 32-34 and 38-42 were rejected under 35 U.S.C. §§102(a) and (e) as allegedly being anticipated by Lee et al (U.S. Patent No. 6,586,367 and corresponding WO 98/09525; "the Lee patent"). This rejection is traversed in view of the amendments to the claims made herein. The amendments to the claims, without prejudice, render the rejection moot. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Claims 23, 24, 26-28, 32-34, and 38-42 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Lee et al. However, this rejection is respectfully traversed in view of the amendments to the claims herein. Applicants respectfully assert that the Lee patent is defective.

For example, Lee does not appear to be supported by adequate biological examples (see, for example, col. 13-14 of the Lee patent). Further, test descriptions were only provided for pre-emergence and post-emergence treatments of monocotyledonous and dicotyledonous weeds with other, undisclosed, species of cultivated plants. Notably, herbicidal mixtures and detailed results demonstrating synergy were also not disclosed in the Lee patent.

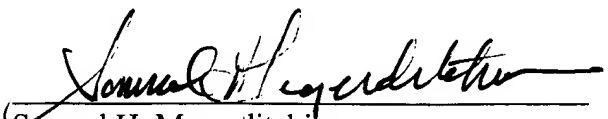
Against this background, Applicants could not find scientific evidence of synergy between herbicidal combinations for use in different crops with tolerance to, for example, glufosinate, in the Lee patent. Further, no detailed facts were found in either U.S. Patent No. 6,586,367 or in WO 98/09525. This renders a selection of additional herbicidal agents improbable and places an undue burden on the skilled artisan to determine what technical teaching should be used to obtain the claimed synergistic results. Due to this insufficient disclosure, Applicants find that the technical teachings of the Lee patent are not obvious in view of the present invention.

Additionally, Applicants respectfully point out that synergy is disclosed in the biological examples of the instant application. In view of the amendments and remarks made herewith, the results were unexpected and provide evidence of the superiority of the instant invention over the cited art. Therefore, even if it were so held that the skilled artisan would have been motivated to practice the instant invention from a reading of the cited art, a point Applicants do not concede, the arguments contained herein clearly rebut the *prima facie* case of obviousness, since the cited art does not suggest that the Applicants' invention as claimed would exhibit such superior results. The claimed invention, therefore, is unobvious. Therefore, reconsideration and withdrawal of the §103(a) rejection are respectfully requested.

CONCLUSION

In view of the foregoing, favorable consideration of the claims is earnestly solicited. If, however, there is still an outstanding issue, the Examiner is invited to contact the undersigned for its prompt attention.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 

Samuel H. Megerditchian
Reg. No. 45,678
(212) 588-0800